

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

IN THE MATTER OF GRAND JURY
TESTIMONY OF WILLIAM C. MALONEY

MISC. NO. 3:94MC40

ORDER DENYING DEFENDANT'S MOTION FOR
TRANSCRIPT OF WILLIAM C. MALONEY'S GRAND JURY TESTIMONY

This cause is before the court on the motion of J.B. Sykes, through counsel, pursuant to Federal Rule of Criminal Procedure 6(e)(3)(C)(i), requesting the court to authorize the disclosure of testimony given by William C. Maloney before the Grand Jury on January 15, 1993. In support of the petition Sykes alleges that on November 24, 1992, Maloney pled guilty in Criminal Case No. 4:92CR123 to a one count information charging him with using the mails in execution of a scheme to defraud John Deere Company by submitting forged notes and security agreements to obtain financing on equipment purchased from West Implement Company which he then sold without authorization and converted the proceeds. Sykes alleges that he bought some of the equipment from Maloney and that John Deere Company has filed a replevin action against him in the Circuit Court of Sunflower County to recover the equipment. Sykes claims that he purchased the equipment in good faith from Maloney and that John Deere Company knew, or should have known, that Maloney was engaged in a fraudulent scheme and was negligent in failing take preventive action. Sykes alleges that such negligence is his defense to the replevin action and that only Maloney can prove it.

Maloney is currently incarcerated in the federal prison camp in Montgomery, Alabama. On or about November 15, 1993, the attorney for Sykes requested the United States Attorney's office voluntarily disclose the Grand Jury testimony of Maloney given before the Federal Grand Jury on or about January 15, 1993. This request was denied by Alfred E. Moreton III in a phone conference in November of 1993. Subsequently, on or about May 4, 1994, filed a Writ of Habeas Corpus Ad Testificandum in the Circuit Court of Sunflower County seeking authorization to obtain Maloney's testimony. The writ was denied on June 15, 1994, upon the representation of Maloney's counsel, Leland Jones III, that Maloney would assert his privilege against self-incrimination under the Fifth Amendment to the Constitution of the United States.

The petitioner seeks disclosure of the testimony so that he may use it in the replevin action brought by John Deere against Sykes in the Circuit Court of Sunflower County. He claims that the testimony is necessary to prove his defense and avoid a possible injustice and that his need for the testimony is greater than any need for its continued secrecy.

The government opposes the petition on the grounds that it fails to demonstrate with particularity a compelling necessity for breaching the indispensable secrecy of grand jury proceedings. The government argues that Sykes does not allege with any particularity the need for Maloney's grand jury testimony or even how the

testimony could be beneficial in the replevin action if Maloney is unavailable as a witness.

Parties seeking grand jury transcripts under Rule 6(e)[(3)(c)(ii)] must show that the material they seek is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that their request is structured to cover only material so needed.

Douglas Oil Co. v. Patrol Stops Northwest, 441 U.S. 211, 222 (1979)(footnote omitted). The burden is on the petitioner to demonstrate (1) a "particularized need," and (2) that the particularized need outweighs the policy of protecting the secrecy of grand jury proceedings. Id. at 223. The court is of the opinion that the petitioner has failed to meet his burden.

The mere fact that the grand jury materials sought are rationally related to the civil litigation does not constitute a sufficient particularized need for disclosure. United States v. Sells Engineering, Inc., 463 U.S. 418, 445-46 (1983). "[A] mere possibility of benefit does not satisfy the required showing of particularized need." Matter of Grand Jury Proceedings, 942 F.2d 1195, 1199 (7th Cir. 1991). Here, the petitioner argues that the need for disclosure is greater than the need for continued secrecy. Specifically, he claims that since the grand jury has terminated the reasons for protection of secrecy are somewhat diminished. In Douglas the court stated that "the interests in grand jury secrecy, although reduced, are not eliminated merely because the grand jury has ended its activities." Douglas, 441 U.S. at 222. The court went further by stating:

For in considering the effects of disclosure on grand jury proceedings, the courts must consider not only the immediate effects upon a particular grand jury, but also the possible effect upon the functioning of future grand juries. Persons called upon to testify will consider the likelihood that their testimony may one day be disclosed to outside parties. Fear of future retribution or social stigma may act as powerful deterrents to those who would come forward and aid the grand jury in the performance of its duties. Id.

"Witnesses before grand juries testify with the expectation that their testimony will not be made public except in fairly narrow circumstances. Fear of reprisal and the range of other concerns behind this expectation do not end with the criminal case." In Re Grand Jury, 832 F.2d 60, 64 (5th Cir. 1987). "The grand jury as a public institution serving the community might suffer if those testifying today knew that the secrecy of their testimony would be lifted tomorrow. This 'indispensable secrecy of grand jury proceedings' ...must not be broken except where there is a compelling necessity. There are instances when that need will outweigh the countervailing policy. But they must be shown with particularity." United States v. Procter & Gamble, 356 U.S. 677, 682 (1958). The court is of the opinion that the petitioner has failed to articulate any particularized need for Maloney's testimony that outweighs the need for continued secrecy.

It is therefore **ORDERED** that:

1) the petitioner's motion for disclosure of the grand jury testimony of William C. Maloney is **DENIED**.

SO ORDERED this ____ day of September, 1994.

United States District Judge